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"Protecting Public Health and the Environment"

600 Wilson Avenue
Newark, New Jersey 07105
P (973) 466-2915 F (973) 817-5738
www.nj.gov/pvsc

September 28, 2016

Judith A. Enck
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

Dear Administrator Enck:

I write to you on behalf of the Passaic Valley Sewerage Commission ("PVSC"). PVSC is facing an unprecedented series of three (3) separate enforcement initiatives of the United States Environmental Protection Agency ("USEPA"), all of which share one common primary issue from PVSC's perspective: combined sewer overflows ("CSOs"). The three enforcement initiatives are: (1) the Superfund remediation of the Passaic River; (2) reduction of CSOs through the National Pollutant Discharge Elimination System permitting program; and (3) an ongoing Clean Water Act enforcement action against PVSC. We respectfully request a meeting with you and your staff to discuss potential resolution of these three matters in a manner which allows both USEPA and PVSC to best serve the public health and welfare.

As general background, PVSC owns and operates a 330-million-gallon-per-day wastewater treatment plant in Newark, New Jersey. Serving approximately 1.5 million people every day, PVSC is the fifth-largest publicly-owned treatment works in the United States. PVSC's treatment district encompasses all or parts of 48 municipalities in northeastern New Jersey. Eight (8) of those municipalities own and operate local collection systems that are combined sewers. The eight municipalities are Newark, Jersey City, Paterson, Bayonne, Harrison, Kearny, East Newark, and North Bergen. Between them, these municipalities own and operate 68 CSO outfalls in PVSC's treatment district.

As USEPA is aware, last year the New Jersey Department of Environmental Protection ("NJDEP") issued new CSO permits under the NPDES program. Those permits went into effect on July 1, 2015. The permits require the development of a Long Term Control Plan ("LTCP") for the drastic reduction or elimination of CSO events. The permits also specifically call for

cooperative LTCP planning among all users of a “hydraulically connected sewer system,” meaning local collection systems and the treatment plants to which those collection systems drain.

PVSC is playing a leading role in the Long Term Control Planning process by working collectively with its member CSO municipalities to develop an LTCP. In that regard, PVSC has already committed over \$10 million for the planning process alone. It is not yet possible to estimate the total cost of LTCP compliance. Preliminary estimates, however, range from \$1.5 billion to \$3 billion. The ultimate burden of compliance will fall upon some of the poorest cities in New Jersey. Indeed, whereas the median household income (“MHI”) for the United States is \$55,046, the MHI for Newark is \$34,397, and the MHI for Paterson is \$33,583. These figures illustrate the level of poverty in these predominantly minority communities that will be asked to shoulder an extremely heavy load for LTCP implementation over the next 25 years.

While CSO Permit issues are well known, the two issues of the Passaic River Superfund cleanup and the Clean Water Act enforcement action have the potential to dramatically increase the burden on these same municipal ratepayers. In the Superfund case, USEPA issued a Record of Decision in March 2016 for the cleanup of the lower eight miles of the Passaic River. Although other estimates are higher, USEPA’s own estimate for the cleanup of the lower eight miles is \$1.4 billion. This figure does not take into account remaining upstream portions of the Passaic River or the Newark Bay Complex. In every public discussion of payment for the remediation of the Passaic River, USEPA has stated that the cost of cleanup will be paid for by the companies that caused the pollution. However, in April 2016, PVSC and four (4) of its CSO member municipalities were named as potentially responsible parties (“PRPs”). Cost estimates for the resolution of this matter are not known at this time, pending discussions with the United States Department of Justice (“USDOJ”).

Finally, PVSC faces a Clean Water Act enforcement action initiated by USEPA in February 2011 for alleged violations of PVSC’s previous NPDES permit relating to the Nine Minimum Controls for CSOs. PVSC, USEPA, USDOJ, and the State of New Jersey (through NJDEP and the New Jersey Attorney General’s Office) have been working together in an effort to resolve the alleged violations, none of which PVSC agrees or has admitted. The new NPDES permit issued by NJDEP effectively resolves the main issues raised by USEPA, and PVSC has long since corrected the remaining issues voluntarily. The parties are engaged in good faith negotiations to resolve the matter. Nevertheless, PVSC has concerns that it wishes to discuss prior to any final settlement of this matter.

PVSC believes that a single collaborative solution to the three related initiatives will yield greater environmental benefits for its ratepayers at a lower cost. It will also further USEPA’s policy of having the CWA and Superfund Programs work together to resolve common issues, as set forth in USEPA’s February 12, 2015, Memorandum between the Assistant Administrators for Water Enforcement and Compliance Assurance and Solid Waste and Emergency Response, a copy of which is enclosed for your ease of reference. Finally, it will promote USEPA’s stated goal of providing “environmental justice” for groups that fit squarely within that term’s definition.

Accordingly, we respectfully request a meeting with you, your Clean Water Act staff, your Superfund staff, and your enforcement staff. We appreciate all of the courtesies that you have

extended to us in the past and hope that we can work together to continue to enhance the environment in an appropriate and affordable manner. Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Gregory Tramontozzi', with a stylized 'G' and 'T'.

Gregory Tramontozzi, Esq.
Executive Director

Enclosure

cc: Thomas Tucci, Jr., Chairman, PVSC
Kenneth J. Lucianin, Vice Chairman, PVSC
Elizabeth Calabrese, Commissioner, PVSC
David S. Catuogno, Commissioner, PVSC
Mildred C. Crump, Commissioner, PVSC
Scott M. Heck, Commissioner, PVSC
Luis A. Quintana, Commissioner, PVSC
Bridget McKenna, Chief Operating Officer, PVSC

bcc: E. Esteves (via email)
S. Lipke (via email)
M. Witt (via email)
R. Iossa (via email)
K. Tucker (via email)